

ARKANSAS SUPREME COURT

No. CR 09-286

Opinion Delivered May 14, 2009

ARTHUR E. DICKERSON
Petitioner

v.

STATE OF ARKANSAS
Respondent

PRO SE MOTION FOR APPEAL BY
PERMISSION [CIRCUIT COURT OF
SEBASTIAN COUNTY, FT. SMITH
DISTRICT, CR 2003-276, HON. JAMES
R. MARSCHEWSKI, JUDGE]

MOTION TREATED AS MOTION FOR
RULE ON CLERK AND DENIED.

PER CURIAM

In 2004, petitioner Arthur E. Dickerson was found guilty by a jury of first-degree murder and sentenced to life imprisonment. We affirmed. *Dickerson v. State*, 363 Ark. 437, 214 S.W.3d 811 (2005). Subsequently, petitioner filed in the trial court a pro se petition for postconviction relief pursuant to Arkansas Rule of Criminal Procedure 37.1. The trial court denied the petition in an order entered on January 4, 2006, and petitioner timely filed a pro se notice of appeal from the order.

On March 19, 2009, petitioner filed a motion in this court to proceed with an appeal by permission, that is, to lodge the record belatedly and proceed with an appeal from the order. Petitioner tendered a partial record with the motion.

If a notice of appeal was timely filed, a motion for belated appeal is properly treated as a motion for rule on clerk pursuant to Arkansas Supreme Court Rule 2-2(b). *Mitchem v. State*, 374 Ark. 157, ___ S.W.3d ___ (2008) (per curiam). In this matter, the motion for appeal by permission is thus treated as a motion for rule on clerk.

All litigants, including those who proceed pro se, must bear responsibility for conforming to the rules of procedure or demonstrating good cause for not doing so. *Gibson v. State*, 298 Ark. 43, 764 S.W.2d 617 (1989). If a petitioner fails to tender the record in an appeal in a timely fashion, the burden is on the petitioner to make a showing of good cause for the failure to comply with proper procedure. *Garner v. State*, 293 Ark. 309, 737 S.W.2d 637 (1987) (per curiam). The fact that a petitioner is proceeding pro se does not in itself constitute good cause for the failure to conform to the prevailing rules of procedure. *Walker v. State*, 283 Ark. 339, 676 S.W.2d 460 (1984) (per curiam).

The time in which a record on appeal must be lodged in the appellate court is governed by Arkansas Rule of Appellate Procedure–Civil 5 and made applicable to criminal cases by Arkansas Rule of Appellate Procedure–Criminal 4(a). Pursuant to Civil Appellate Procedure Rule 5(a), the appeal record must be filed within ninety days from the date the notice of appeal was filed in the trial court.

Here, petitioner filed the notice of appeal in the trial court in 2006 and the instant motion in this court in 2009. Although far more than ninety days have elapsed since the notice of appeal was filed, petitioner does not address the lateness of the partial record tendered here or state good cause for his failure to comply with procedural time limitations. He simply requests leave to proceed with the appeal in order to demonstrate manifest injustice alleged to have occurred in the underlying criminal matter. Petitioner has demonstrated no good reason to proceed with an appeal from the trial court's order denying the Rule 37.1 petition.

Motion treated as motion for rule on clerk and denied.